S.B.CIVIL WRIT PETITION NO.4487/2004

Heeralal Ninama
v.
State of Rajasthan & Anr.

DATE OF ORDER :: 8th March, 2007

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. P.R.Mehta, for the petitioner.
Mr. S.S.Ladrecha, Additional Government Advocate.

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While accepting SBCivil Writ Petition No.203/1993 by an order dated 5.7.1993 this Court directed the respondents to consider candidature of the petitioner for promotion to the post of Lower Division Clerk within two months from the presentation of certified copy of the judgment.

The grievance of the petitioner is that despite the directions above the respondents have not considered his candidature for promotion to the post of Lower Division Clerk and have also not promoted him as such.

A reply to the writ petition has been filed on behalf of the respondents stating therein that the petitioner is having a qualification of “Prathama” from Hindi Sahitya Sammellan, Allahabad and not of Secondary School Examination, that is the

qualification necessary to be considered for appointment as Lower Division Clerk, as such the petitioner is not eligible for promotion to the post of Lower Division Clerk.

Heard counsel for the parties.

The recruitment to the post of Lower Division Clerk is regulated in accordance with the Rajasthan Subordinate Offices Ministerial Staff Rules, 1957 (hereinafter referred to as “the Rules of 1957”). Rule 7(3) of the Rules of 1957 prescribes that 15% of the total number of vacancies of the Lower Division Clerks determined under rule 9 of the said Rules by the appointing authority shall be reserved for being filled in by promotion from amongst the regularly appointed Class-IV employees governed by the Rajasthan Class-IV Service (Recruitment and other Service Conditions) Rules, 1963, if they have put in five years service and whose interse seniority of various units has been drawn on the principles of continuous officiation in the Department concerned subject to possession of academic qualification prescribed for recruitment to the post of Lower Division Clerk. The qualification prescribed for appointment to the post of Lower Division Clerk under Rule 12 of the Rules of 1957 is as follows:-

> "A candidate for direct recruitment to the category of L.D.Cs. must have passed the High School or Secondary Examination or Pravesika Examination (with English) of the Rajasthan Secondary Education Board or of a University or Board recognised by the Government for the purpose of this Rule."

The petitioner is having the qualification of "Prathama" from Hindi Sahitya Sammellan but not any of the qualification prescribed under Rule 12 of the Rules of 1957. It is pertinent to note that prior to 28.6.1985 an incumbent having the qualification of "Prathama" was also treated eligible to be recruited as Lower Division Clerk, however, the aforesaid qualification was deleted from the eligibility clause under a notification No.F.3(53)DOP/A-II/84 dated 5.12.1987. The petitioner after 28.6.1985 is not having the qualification to be considered for appointment as Lower Division Clerk. Pertinent to note here that the petitioner being appointed as Class-IV employee in the year 1983 completed five years of service in the year 1988, therefore, his eligibility to be considered for promotion to the post of Lower Division Clerk was to be examined in accordance with the Rules of 1957 after the year 1988. The petitioner being not possessing the qualification in accordance with Rule 12 of the Rules of 1957 in the year 1988 or subsequent thereto was rightly denied promotion by the respondents.

As such, I do not find any merit in the writ petition. The same, therefore, is dismissed.

(GOVIND MATHUR),J.

kkm/ps.